



Report to the Auburn City Council

Action Item
Agenda Item No. **13**

City Manager's Approval
[Signature]

To: Honorable Mayor and Members of the City Council
From: Robert Richardson, City Manager
Andy Heath, Administrative Services Director
Date: January 9, 2012
Subject: Auburn Urban Development Authority Successor Agency Opt-Out

The Issue

Shall the City Council adopt a resolution electing not to serve as the successor agency to the Auburn Urban Development Authority and notify the Placer County Auditor-Controller of such decision by January 13, 2012?

Action Requested

It is recommended that the City Council, by **RESOLUTION**, elect to not serve as the successor agency to the Auburn Urban Development Authority and notify the Placer County Auditor-Controller of this decision by January 13, 2012.

Background

On June 29, 2011, State of California Governor Jerry Brown signed into law AB 1x 26 (the Act), effectively dissolving redevelopment agencies in California. Consistent with the Act, the Auburn Urban Development Authority (AUDA) could no longer make any payments, with the exception of those required by statute, and was prohibited from entering into any new contracts. Any and all applicable payments subsequent to the June 29, 2011 dissolution date were required to be noted on an "Enforceable Obligations Payment Schedule (EOPS)", which was duly adopted by the Authority on August 22, 2011.

Shortly after being signed into law, a lawsuit was filed by the California Redevelopment Association, the League of California Cities and other affected parties challenging the validity of the ability to eliminate redevelopment. This challenge was heard directly by the California Supreme Court, and a final decision to uphold the validity of ABx1 26 was rendered on December 29, 2011. In their decision, and as a result of the four month stay granted during which arguments from both sides were heard, the Supreme Court ordered moving back some of the dates associated with the redevelopment dissolution process. Noted changes to pertinent dates include moving the dissolution date for all

redevelopment agencies to February 1, 2012, and moving the deadline for which to opt out of being a “successor agency” to January 13, 2012.

Successor Agency

Under ABx1 26, as of February 1, 2012, each redevelopment agency will be dissolved and no longer exist. Essentially, the authority and obligations of the community’s (in the case, the City of Auburn) dissolved redevelopment agency, along with all of its assets, property, contracts, leases, books and records are transferred to and thereafter vested in the “successor agency”.

The successor agency is the community that created the redevelopment agency, unless the community expressly elects not to serve as the successor agency by passing a resolution making such election and filing a copy of this resolution with the county auditor-controller no later than January 13, 2012. If the community elects not to serve as successor agency, then any city, county, city and county or special district within the county of the former redevelopment agency may become the successor agency by adopting a resolution electing to be the successor agency and submitting the resolution to the county auditor-controller. Successor agencies are required to do all of the following (list relates specifically to the Auburn Urban Development Authority):

- Continue to make payments due on redevelopment agency enforceable obligations;
- Maintain reserves required by redevelopment agency bond documents;
- Perform obligations required by redevelopment agency enforceable obligations;
- Pay unencumbered balances of redevelopment agency funds to the county auditor-controller, including the unencumbered balance of the Low and Moderate Income Housing Fund;
- Wind down the affairs of the redevelopment agency in accordance with the direction of the oversight board;
- Prepare a proposed administrative budget and submit it to the oversight board for approval;
- Provide administrative cost estimates to the county auditor-controller for each six month period to be paid from the Redevelopment Property Tax Trust Fund; and
- Before each six-month period, prepare a “Recognized Obligation Payment Schedule” setting forth the minimum payment amounts and due dates of payments required by enforceable obligations during that six month fiscal period.

Oversight Board

The successor agency’s activities are subject to review and approval by an oversight board. The oversight board will be comprised of seven political appointees from affected local taxing entities and the community. Oversight board members will include one member appointed by the county board of supervisors, one member appointed by the mayor of the affected city, one member appointed by the largest special tax district with territory in the affected jurisdiction, one member appointed by the county superintendent of education, one member appointed by the Chancellor of the California Community Colleges, one member of the public appointed by the county board of supervisors, and

one member representing the employees of the former redevelopment agency appointed by the mayor.

Essentially, cities that formed redevelopment agencies are responsible for selecting two of the seven oversight board members. The successor agency must receive approval from the oversight board before taking any of the following actions (as they relate to the Auburn Urban Development Authority):

- Setting aside reserves for outstanding redevelopment agency bonds;
- If a city or county wished to retain any property or other assets for future redevelopment activities, the city can reach a compensation agreement with the other taxing entities to provide them a share of the value of the property retained. This agreement must also be approved by the oversight board;
- Establish the Recognized Obligation Payment Schedule;

The oversight board is also required to direct the successor agency to do all of the following:

- Dispose of all assets and property of the former redevelopment agency that were funded by tax increment;
- If the community that created the redevelopment agency so elects, transfer housing functions and assets to the community, otherwise to a local housing authority within the territorial jurisdiction of the redevelopment agency.

Analysis

The fundamental question to be addressed within the context of this analysis is “Should the City of Auburn chose to be the successor agency of the dissolved Auburn Urban Development Authority?”

Use of Prior Tax Increment Received for Projects

Redevelopment agencies are effectively dissolved – only debts existing as of June 29, 2011 will be paid from current and future tax increment previously used to fund projects. All bond proceeds received by the Auburn Urban Development Authority (AUDA) have been spent, and after all applicable enforceable obligations have been paid through fiscal year 2011-12, staff anticipates approximately \$25,000 of funds already received will be paid as unencumbered balances to the auditor-controller.

Each year, the AUDA was required to allocate 20% of gross tax increment for each fiscal year to the Low and Moderate Income Housing (LMIH) Fund. These funds could only be used for applicable housing purposes. At the present time, there is approximately \$906,000 in unencumbered fund balance in the LMIH Fund. Consistent with AB 1x 26, these funds must be transferred to the auditor-controller via the successor agency. Impacts regarding the disposal of the parcel of land on Blocker Drive currently held in the LMIH Fund will be considered and presented with a future staff report on whether or not to become the successor housing agency (separate action).

Future Property Tax

Once all obligations are paid each year (statutory pass-throughs, enforceable obligations and successor agency administrative costs) funds remaining on deposit with the auditor-controller shall be distributed to local agencies and school entities in each successor agency's jurisdiction.

Advantages and Disadvantages/Risks to Becoming a Successor Agency

Advantages:

- Community is able to recover budgeted and allowable administrative costs for work performed.
- Community is able to implement the wind-down of the redevelopment agency and have some control over the process, albeit under the oversight board's supervision.

Disadvantages/Risks:

- If the communities administrative costs exceed the amount the community has budgeted for such costs, such amounts may not be reimbursed.
- The community may not receive reimbursable administrative costs if there are insufficient tax increment funds to cover higher priority costs (becomes possible if prior levels of tax increment drop below amounts required to pay applicable pass-throughs, and service outstanding bonded debt)¹
- If the successor agency is sued as a result of its efforts to wind down the redevelopment agency, the successor agency could incur costs in defending any such lawsuit, although the successor agency's liability will be limited to the amount of property tax it receives and the value of assets transferred to the successor agency under AB 1x 26.
- Most decisions made by the successor agency must be approved by the 7-member oversight board, of which only two members have ties to the prior RDA.

Conclusion

Given the potential disadvantages and risks and limited advantages, coupled with the fact that a successor agency has virtually no control over the distribution of tax revenues, staff recommends opting out of being the successor agency to the AUDA.

¹ Staff estimates the amount of net increment available after paying applicable pass-throughs and bond debt service would have been approximately \$100,000 (not taking into account the low and moderate income housing 20% transfer, which is no longer required).

Alternatives Available to the Board; Implications of Alternatives

1. By **RESOLUTION**, elect to not serve as the successor agency to the Auburn Urban Development Authority and notify the Placer County Auditor-Controller of this decision by January 13, 2012.
2. Do not adopt a resolution and provide direction to staff. Absent passing a resolution by January 13, 2012 to opt out of being the successor agency, the City will become the successor agency.

Fiscal Impact

None.

Attachment – Memorandum from Iris Yang, AUDA Counsel, Best Best & Krieger, LLP

RESOLUTION NO. 12-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN CALIFORNIA,
ELECTING NOT TO SERVE AS THE SUCCESSOR AGENCY TO THE AUBURN
URBAN DEVELOPMENT AUTHORITY PURSUANT TO PART 1.85 OF DIVISION 24
OF THE CALIFORNIA HEALTH AND SAFETY CODE

WHEREAS, the City Council of the City of Auburn ("City") approved and
adopted the Redevelopment Plan for the Auburn Redevelopment Project
("Redevelopment Plan") covering certain properties within the City (the
"Project Area"); and

WHEREAS, the Redevelopment Agency of the City of Auburn ("Agency") has
been engaged in activities to execute and implement the Redevelopment Plan
pursuant to the provisions of the California Community Redevelopment Law
(Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has
undertaken redevelopment projects in the Project Area to eliminate blight, to
improve public facilities and infrastructure, to renovate and construct
affordable housing, and to enter into partnerships with private industries to
create jobs and expand the local economy; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature
enacted, and the Governor signed , companion bills AB 1X 26 and AB 1X 27,
requiring that each redevelopment agency be dissolved unless the community
that created it enacts an ordinance committing it to making certain payments;
and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the
State of California on July 18, 2011 (California Redevelopment Association, et
al. v. Ana Matosantos, et al., Case No. S194861), challenging the

1 constitutionality of AB 1X 26 and AB 1X 27 on behalf of cities, counties and
2 redevelopment agencies and requesting a stay of enforcement; and
3 WHEREAS, on December 29, 2011, the Supreme Court issued its final decision
4 in the aforesaid litigation, upholding AB 1X 26, invalidating AB 1X 27, and
5 extending all statutory deadlines under AB 1X 26, essentially dissolving all
6 redevelopment agencies throughout the State effective February 1, 2012; and
7 WHEREAS, AB 1X 26 further provides that, upon their dissolution, any property
8 taxes that would have been allocated to redevelopment agencies will no longer
9 be deemed tax increment, and will be allocated first to successor agencies to
10 make payments on the existing indebtedness of the dissolved redevelopment
11 agencies, with remaining balances allocated in accordance with applicable
12 constitutional and statutory provisions; and
13 WHEREAS, AB 1X 26 provides that successor agencies be designated as
14 successor entities to the former redevelopment agencies, and provides that,
15 with certain exceptions, all authority, rights, powers, duties and obligations
16 previously vested with the former redevelopment agencies, under the CRL, are
17 vested in the successor agencies; and
18 WHEREAS, the California Supreme Court established a January 13, 2012 date
19 by which a city or county must elect not to be a successor agency; and
20 WHEREAS, after review and analysis of the advantages and disadvantages
21 associated with being the successor agency, the City desires to elect not to
22 serve as the successor agency to the Agency under AB 1X 26; and
23 WHEREAS, all other legal prerequisites to the adoption of this Resolution have
24 occurred.
25 THE CITY COUNCIL OF THE CITY OF AUBURN, CALIFORNIA, DOES HEREBY
26 RESOLVE AS FOLLOWS:
27 Section 1. Recitals. The Recitals set forth above are true and correct and
28 incorporated herein by reference.

1 Section 2. Election Not To Serve As Successor Agency. In accordance
2 with Health and Safety Code Section 34173(d)(1), and based on the Recitals
3 set forth above, the City Council hereby elects and determines that the City of
4 Auburn shall not serve as the "successor agency" to the former Auburn Urban
5 Development Authority.

6 Section 3. Implementation. The City Council hereby authorizes and
7 directs the City Manager to file a copy of this Resolution with the Placer County
8 Auditor-Controller, the Controller of the State of California, and the California
9 Department of Finance providing notice of the adoption of this Resolution and
10 the City's election not to serve as the successor agency to the Agency, in
11 accordance with Health and Safety Code Section 34173(d)(1).

12 Section 4. Severability. If any provision of this Resolution or the
13 application thereof to any person or circumstance is held invalid, such invalidity
14 shall not affect other provisions or applications of this Resolution which can be
15 given effect without the invalid provision or application, and to this end the
16 provisions of this Resolution are severable. The City Council hereby declares
17 that it would have adopted this Resolution irrespective of the invalidity of any
18 particular portion thereof.

19
20 Section 5. Certification. The City Clerk shall certify to the adoption of
21 this Resolution.

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23 Section 6. Effective Date. This Resolution shall become effective upon
24 its adoption.

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26 PASSED AND ADOPTED at a regular meeting of the City Council on the
27 9th day of January 9, 2012, by the following vote:
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AYES:

NAYS:

ABSENT:

ABSTAIN:

Keith Nesbitt, Mayor

ATTEST:

Joseph Labrie, City Clerk

Memorandum

To: Andy Heath
From: Iris P. Yang, Special AUDA Counsel
Best Best & Krieger LLP
Date: January 4, 2012
Re: Role of Redevelopment Agency Successor Agency; Advantages and Disadvantages

BACKGROUND

On June 29, 2011, Governor Jerry Brown signed into law Assembly Bills 1X 26 and 1X 27. AB 1X 26 dissolves all redevelopment agencies in California and places responsibility for the liquidation of redevelopment assets and payoff of redevelopment agency debts with a "successor agency." AB 1X 26 statutorily designates the community that created the redevelopment agency as that redevelopment agency's successor agency, unless the community expressly elects not to act as successor agency. AB 1X 27, that would have provided communities with redevelopment agencies the opportunity to voluntarily make "community remittance" payments to the county and prevent the dissolution of their redevelopment agencies, was invalidated on December 29, 2011, by the California Supreme Court in its opinion in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861. The Supreme Court upheld the validity of AB 1X 26 in the same opinion.

As a result, each community with a redevelopment agency must decide whether or not to serve as successor agency for liquidation of the assets of its redevelopment agency and paying off the redevelopment agency's debts. The deadline for adopting a resolution electing not to serve as successor agency is January 13, 2012. This Memorandum describes the primary role of the successor agency and the primary advantages and disadvantages of being a successor agency.

Each community with a redevelopment agency must also decide whether or not to retain the housing assets and functions previously performed by the redevelopment agency. If the community elects to retain such housing functions and assets, all rights, powers, duties and obligations, excluding amounts on deposit in the Low and Moderate Income Housing Fund, shall be transferred to the community. If the community chooses not to retain such functions and assets, such functions and assets shall be transferred to a local housing authority in the territorial jurisdiction of the redevelopment agency, or if no housing authority exists, to the Department of Housing and Community Development. A discussion of the ramifications of electing to take on the redevelopment agency's housing functions and assets are beyond the scope of this Memorandum, but Best Best & Krieger LLP has prepared a separate memorandum discussing such election.

SUCCESSOR AGENCY ELECTION

Under AB 1X 26, as of February 1, 2012, each redevelopment agency will be dissolved and no longer exist.^{1, 2} Except for those powers repealed or limited by AB 1X 26, the authority and obligations of the community's dissolved redevelopment agency, along with all of its assets, property, contracts, leases, books and records are transferred to and thereafter vested in the "successor agency."³

The successor agency is the community that created the redevelopment agency, unless the community expressly elects not to serve as the successor agency by passing a resolution making such election and filing a copy of this resolution with the county auditor-controller no later than January 13, 2012.⁴

If the community elects not to serve as successor agency, then any city, county, city and county or special district within the county of the former redevelopment agency may become the successor agency by adopting a resolution electing to be the successor agency and submitting the resolution to the county auditor-controller.⁵ The first such agency that submits such a resolution to the county auditor-controller will be the successor agency.⁶ If no such agency elects to serve as successor agency, the Governor will appoint three local residents of the county to serve as a "designated local authority" that will act as a successor agency, until a local agency elects to become the successor agency.⁷

SUCCESSOR AGENCY RESPONSIBILITIES

Starting February 1, 2012, successor agencies are required to do all of the following⁸:

- Continue to make payments due on redevelopment agency enforceable obligations (subject to the limitations of Sections 34171(e)(2) and 34177(a));
- Maintain reserves required by redevelopment agency bond documents;
- Perform obligations required by redevelopment agency enforceable obligations;

¹ Health and Safety Code § 34172(a)(1) provides that redevelopment agencies' dissolution date is October 1, 2011. In its decision in *Matsantos*, though, the Supreme Court extended each effective date or deadline for performance of an obligation in AB 1X 26 occurring prior to May 1, 2012, to take effect four months later, with one exception – that the deadline for adopting a resolution not to serve as successor agency was extended to 15 days after issuance of the Supreme Court's opinion instead of four months.

² All statutory references in this Memorandum are to the Health and Safety Code, unless specifically stated otherwise.

³ §§ 34173(b), 34175(b).

⁴ §§ 34171(j), 34173.

⁵ § 34173(d)(2).

⁶ Ibid.

⁷ § 34173(d)(3).

⁸ § 34177.

- Pay unencumbered balances of redevelopment agency funds to the county auditor-controller, including the unencumbered balance of the Low and Moderate Income Housing Fund;
- Dispose of assets of the redevelopment agency as directed by the oversight board (discussed below);
- Enforce all redevelopment agency rights for the benefit of taxing entities, including collecting loans, rents, and other revenues due to the redevelopment agency;
- If the community that created the redevelopment agency so elects, transfer housing functions and assets to the community, otherwise to a local housing authority within the territorial jurisdiction of redevelopment agency, or if a housing authority does not exist, the State Department of Housing and Community Development;
- Wind down the affairs of the redevelopment agency in accordance with Sections 34170 through 34191 and the direction of the oversight board;
- Oversee development of properties, until the contracted work has been completed or the contractual obligations of the redevelopment agency can be transferred to other parties;
- Prepare a proposed administrative budget and submit it to the oversight board for approval;
- Provide administrative cost estimates to the county auditor-controller for each six month fiscal period to be paid from the Redevelopment Property Tax Trust Fund; and
- Before each six month fiscal period, prepare a "Recognized Obligation Payment Schedule" setting forth the minimum payment amounts and due dates of payments required by enforceable obligations during that six month fiscal period.

The successor agency must also create a "Redevelopment Obligation Retirement Fund,"⁹ which is the fund from which the successor agency makes the enforceable obligation payments of the dissolved redevelopment agency listed in its Recognized Obligation Payment Schedule. The Redevelopment Obligation Retirement Fund is allocated funds from the Redevelopment Property Tax Trust Fund, which is created by the county auditor-controller to receive tax increment revenue otherwise allocable to the dissolved redevelopment agency to be disbursed to not only the Recognized Obligation Retirement Fund, but also to pay pass through

⁹ § 34170.5.

payments, to pay successor agency administrative costs, and to be disbursed to other taxing entities within the dissolved redevelopment agency's jurisdiction.¹⁰

OVERSIGHT BOARD

The successor agency's activities are subject to review and approval by an oversight board. The oversight board will be comprised of seven political appointees from affected local taxing entities and the community, as follows¹¹:

1. One member appointed by the county board of supervisors;
2. One member appointed by the mayor for the city that created the redevelopment agency. If the county or a joint powers agency formed the redevelopment agency, then the largest city by acreage in the territorial jurisdiction of the former redevelopment agency may select one member. If there are no cities with territory in the project area of the county or special district's redevelopment agency, the county superintendent of education may appoint an additional member to represent the public;
3. One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction off the redevelopment agency that is eligible to receive property tax revenues pursuant to Section 34188. If there are no eligible special districts within the territorial jurisdiction of the former redevelopment agency, then the county may appoint one member to represent the public;
4. One member appointed by the county superintendent of education;
5. One member appointed by the Chancellor of the California Community Colleges;
6. One member of the public appointed by the county board of supervisors; and
7. One member representing the employees of the former redevelopment agency appointed by the mayor or chair of the board of supervisors, as the case may be, from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time.

Cities that formed redevelopment agencies are responsible for selecting two of the seven oversight board members, including the member appointed by the mayor and the member representing the employees of the former redevelopment agency. Regardless of whether the county formed the redevelopment agency or not, the county is responsible for selecting two of the seven oversight board members, including one member appointed by the county board of

¹⁰ §§ 34172(d), 34183(a).

¹¹ § 34179(a).

supervisors and one member of the public, and possibly a third member if there are no eligible special districts. If a county has formed a redevelopment agency, it is responsible for selecting an additional member representing the employees of the former redevelopment agency. As a result, the city or county should have multiple representatives looking out for the city or county's interests, respectively, on the oversight board. This oversight board representation is likely to be particularly important where the city or county is serving as successor agency, but may also be important where they do not.

The successor agency must receive approval from the oversight board before taking any of the following actions¹²:

- Establishing new repayment terms for any outstanding loans;
- Refunding of outstanding redevelopment agency debt to provide savings or avoid debt service spikes. The successor agency is not permitted to create additional debt or accelerate debt service;
- Setting aside reserves for outstanding redevelopment agency bonds;
- Merging project areas;
- Continuing acceptance of grants or other financial assistance, if the assistance is conditioned on the provision of matching funds in an amount greater than five percent;
- If a city or county wishes to retain any property or other assets for future redevelopment activities, the city or county can reach a compensation agreement with the other taxing entities to provide them a share of the value of the property retained. This agreement must also be approved by the oversight board;
- Establish the Recognized Obligation Payment Schedule;
- Any agreement between the successor agency and the city or county that formed the redevelopment agency; and
- An agreement of the successor agency to pledge, or enter into an agreement to pledge property tax revenues.

The oversight board is also required to direct the successor agency to do all of the following¹³:

- Dispose of all assets and property of the former redevelopment agency that were funded by tax increment. The oversight board may direct the successor agency to transfer ownership of certain public assets, such as

¹² § 34180.

¹³ § 34181.

roads, school buildings, parks and fire stations, to an appropriate public agency pursuant to any existing agreements relating to the construction or use of such assets.

- Cease performance under any agreements that do not meet the definition of “Enforceable Obligations.”
- If the community that created the redevelopment agency so elects, transfer housing functions and assets to the community, otherwise to a local housing authority within the territorial jurisdiction of the redevelopment agency, or if a housing authority does not exist, the State Department of Housing and Community Development.
- Terminate any agreements between the redevelopment agency and any public entity providing funding for debt service obligations or for the construction or operation of facilities owned and operated by the public entity, if the oversight board determines that early termination would be in the best interest of the taxing entities.
- Determine whether any agreements with private parties should be terminated or renegotiated to reduce liabilities and increase revenues to the taxing entities.

ADVANTAGES AND DISADVANTAGES OF ELECTING TO BE THE SUCCESSOR AGENCY

The community that created a redevelopment agency is the successor agency under AB 1X 26, unless the community chooses not to serve as the successor agency. There may be some benefit to serving as the successor agency because the community will implement the wind-down of the redevelopment agency and have some control over that process, albeit under the oversight board’s supervision.

If the community chooses to take on the role of successor agency, though, the community should be aware that there may be the following risks associated with being the successor agency: (1) if the community’s administrative costs exceed the amount the community has budgeted for such costs, such amounts may be unreimbursed; (2) if there are insufficient tax increment funds to cover pass through payments and costs set forth in the Recognized Obligation Payment Schedule, the community may not receive some or all of the tax increment funds budgeted to cover administrative costs because administrative costs are a lower priority; (3) if a lawsuit is brought against the community as successor agency, the community may have to defend such lawsuit at its own cost. Each of these potential risks are subject to the statutory limitation on successor agency liability to the amount of property tax the successor agency receives and the value of assets transferred to the successor agency, all pursuant to AB 1X 26. Each of these potential risks is discussed in more detail below.

First, the community could incur unreimbursed costs as a result of serving as the successor agency, if such costs exceed the successor agency’s approved budget. The successor agency is responsible for developing an administrative budget for each upcoming six month

fiscal period.¹⁴ This budget should include costs of meetings of the oversight board, which the successor agency is required to fund.¹⁵ The allowable administrative costs to be included in the budget are limited to five percent of the total property tax allocated to the successor agency for the 2011-12 fiscal year¹⁶, and up to three percent of the property tax allocated to the successor agency's Recognized Obligation Retirement Fund during each fiscal year thereafter, provided that if the percentage amount is less than \$250,000, the successor agency may spend up to \$250,000 on administrative expenses.¹⁷ However, these amounts are a cap and the administrative budget is subject to approval by the oversight board. Consequently, the successor agency will be eligible to receive an amount ranging from a minimum amount of \$250,000 (unless a smaller amount is agreed to by the successor agency) and a maximum of five percent of property tax allocated to the successor agency in the 2011-12 fiscal year and three percent of the funds deposited into the Recognized Obligation Retirement Fund every year thereafter.

Additionally, there is a risk that the successor agency will not be distributed sufficient property tax revenues from the county auditor-controller to cover administrative costs if there are insufficient tax increment funds to cover higher priority costs. Starting February 1, 2012, the county auditor-controller is required to determine the amount of property taxes that would have been allocated to the redevelopment agency had the redevelopment agency not been dissolved.¹⁸ These amounts are placed in the Redevelopment Property Tax Trust Fund at the county. Prior to each six month fiscal period, the county auditor-controller disburses the funds for the upcoming six month fiscal period in the following priority¹⁹:

1. To pay any amounts due to other taxing agencies through statutory pass through payments or under existing pass through agreements;
2. To each successor agency to make the payments listed in its Recognized Obligation Payment Schedule. This amount is deposited into the successor agency's Redevelopment Obligation Retirement Fund;
3. To each successor agency to pay its administrative costs as set forth in an approved budget; and
4. Any money remaining in the Redevelopment Property Tax Trust Fund shall be distributed to local agencies and school entities in each successor agency's jurisdiction.

¹⁴ § 34177(j).

¹⁵ § 34179(c). This § 34179(c) also states that the successor agency's staff is responsible for performing work on behalf of the oversight board at the oversight board's guidance. Although the language of AB 1X 26 is unclear whether such costs are reimbursable administrative costs, it is likely that they are.

¹⁶ The total property tax allocated to the successor agency includes any amounts the successor agency receives after oversight board approval in addition to any amounts received by the successor agency as a city, county or other taxing entity according to normal tax allocation formulas, and prior to deductions for payments pursuant to statutory pass through payments, pass through agreements or the Low and Moderate Income Housing Fund.

¹⁷ § 34171(b).

¹⁸ § 34182(c)(1).

¹⁹ § 34183(a).

Because administrative costs are third priority, it is possible that there will not be sufficient tax increment funds to pay some or all of the successor agency's administrative costs. If prior to any six month fiscal period, the Controller determines there are insufficient funds to pay required debt service, the amount of the deficiency shall be deducted first from the money to otherwise be distributed to local agencies and school entities, then from the money to otherwise be distributed to the successor agency to pay administrative costs.²⁰

Finally, if the successor agency is sued as a result of its efforts to wind down the redevelopment agency, the successor agency could incur costs in defending any such lawsuit, although the successor agency's liability will be limited to the amount of property tax it receives and the value of assets transferred to it as successor agency under AB 1X 26.²¹ There does not appear to be a clear mechanism for the successor agency to provide the funding necessary to defend lawsuits. Also, the oversight board has a clear interest in minimizing money allocated to pay the expenses of the successor agency, in order to increase the amount of property tax available for distribution to the other taxing agencies. The successor agency could be put in a position where it is obligated to defend a lawsuit arising from decisions of the oversight board, without additional funding to pay the costs of defense. However, beyond the attorneys' fees and other costs of suit, the successor agency will have limited liability pursuant to AB 1X 26.

CONCLUSION

As a result of the decision by the California Supreme Court, every redevelopment agency in the State must dissolve pursuant to AB 1X 26. Communities that created redevelopment agencies are left with a decision whether to take on the role of successor agency to the dissolved redevelopment agency, which they will by default, or whether to actively decline such role by January 13, 2012. If communities decide to take on the role of successor agency, they will have the benefit of having some control, with oversight board approval, of the redevelopment agency dissolution process. Communities should also be aware, though, that there are limited risks involved in electing to be the successor agency, including not receiving reimbursement for administrative costs that exceed the community's budget, not receiving reimbursement if there are insufficient tax increment funds to cover higher priority costs, and defending lawsuits against the community as successor agency at its own cost. However, communities should also know that pursuant to AB 1X 26, each of these potential risks are subject to the statutory limitation on successor agency liability to the amount of property tax received by the successor agency and the value of assets transferred to the successor agency.

If you have any further questions regarding the implementation of AB 1X 26, please do not hesitate to contact me.

²⁰ § 34183(b).

²¹ § 34173(e).

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